## United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge			Matthew F	. Kennelly	Sitting Judge if Other than Assigned Judge	: 			
CASE NUMBER		03 C	1017	DATE	9/23/	2003			
CASE TITLE				Smith vs. GC Services					
[In the following box (a) of the motion being pres					e motion, e.g., plaintiff, defer	ndant, 3rd party plaintiff, and	(b) state briefly the nature		
	<del></del>	<del></del>	· · · · · · · · · · · · · · · · · · ·	<del></del>					
L					<del> </del>				
DOCKET ENTRY:									
(1)	□ F	Filed motion of [ use listing in "Motion" box above.]							
(2)		Brief in support of motion due							
(3)		Answer brief to motion due Reply to answer brief due							
(4)		Ruling/Hearing on set for at							
(5)		Status hearing[held/continued to] [set for/re-set for] on set for at							
(6)		Pretrial conference[held/continued to] [set for/re-set for] on set for at							
(7)	П П	Trial[set for/re-set for] on at							
(8)	<u> </u>	[Bench/Jury trial] [Hearing] held/continued to at							
(9)		This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  ☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).							
[Other docket entry] For the reasons set forth on the attached order, the Court grants plaintiff's motion for reconsideration (24-1). The judgment entered by the Court on 8/27/03 is vacated. The case is reinstated. A status hearing is set for 10/6/03 at 9:30 a.m. to address how the case should proceed from here.									
(11)		For fu	irther detail see order	r attached to the orig	inal minute order.]				
	No notices requ	tired, a	dvised in open court.	1			Document Number		
	No notices required.				number of notices	Number			
	Notices mailed by judge's staff.				Ì	PILLES SON I	ì		
1	Notified counsel by telephone.  Docketing to mail notices.					date docketed	}		
Mail AO 450 form.						docketing deputy initials			
	Copy to judge/magistrate judge.			TAU	U.S. DISTRICT CO		29		
OR			courtroom deputy's	93 ())	en Hd hz das co	date mailed notice	<u> </u>		
			initials	Date/tim	e received in Sussession lerk's Office (3)	mailing deputy initials	<u> </u>		

## IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

CECIL SMITH,	)	
Plaintiff,	)	
vs.	) Case No. 03 C 1017	
GC SERVICES, L.P.; DLS ENTERPRISES, INC.; and GC FINANCIAL CORP.,	) ) )	No.
Defendants.	)	SEP 2 5 2000

## MEMORANDUM OPINION AND ORDER

MATTHEW F. KENNELLY, District Judge:

On August 25, 2003, the Court granted summary judgment in favor of defendants in this action under the Fair Debt Collection Practices Act. The Court's decision is reported at 2003 WL 22012229. Familiarity with that decision is assumed.

Plaintiff Cecil Smith has moved for reconsideration, arguing that the Court erred in interpreting the statement in defendant GC Services' dunning letter that the stated "balance due" might not include "accrued but unposted interest." We believed that the term referred to "future interest accruing prior to payment," which was likely to be an insignificant item. This belief was a material aspect of our conclusion that the letter correctly stated "the balance due as of the date of the letter."

Smith points out that the use of the term "accrued" ordinarily would be expected to refer not to future interest, but to interest that had *already* accrued. Upon further reflection, the Court agrees with Smith and therefore concludes that we made an unwarranted assumption in

29

interpreting the letter.

This does not, however, entitle Smith to entry of summary judgment in his favor. The parties offer two possibilities for what GC meant when it used the term "accrued but unposted interest." Smith argues that the term referred to interest that had accrued prior to the date of the letter which the debtor already owed but which was not included in the "balance due." GC argues that it referred not to interest that had accrued as of the date of the letter, but to interest that accrued between the time the letter was sent and its receipt by Smith. On the present record, we cannot say which (if either) of these possibilities is correct, as the parties have offered no evidence on the point. Nor are we in a position to determine whether the amount of "accrued but unposted interest" was at all significant in dollar terms. Without evidence on these points, the Court must conclude that genuine issues of material fact remain and that neither side is entitled to summary judgment. Smith is, however, entitled to an order vacating the entry of judgment against him.

## Conclusion

For the reasons stated above, the Court grants plaintiff's motion for reconsideration [docket #24-1]. The judgment entered by the Court on August 27, 2003 is vacated. The case is reinstated. A status hearing is set for October 6, 2003 at 9:30 a.m. to address how the case should proceed from here.

MATTHEW F. KENNELLY

United States District Judge

Date: September 23, 2003